

part and accompanied or preceded by all documents specified by paragraph (f) of this section, a hearing will be held; the directive shall identify;

(1) The name, business address, telephone number, and brief summary of professional qualifications of the hearing examiner and a statement that the examiner supports the purposes of the Act;

(2) The name, address, and phone number of the Corporation's counsel;

(3) The time and place of the pre-hearing conference and the last date upon which it may be held, which date shall be no more than 37 days after the date of the notice; and

(4) The time and place of the hearing and the last date on which it can start, which date shall be no more than 44 days after the date of the notice;

(e) A copy of these procedures as contained in Part 1625.

(f) A requirement, signed by an official of the Corporation other than the President, may be included that the recipient produce a specific document or documents in its possession, custody, or control no later than the time the recipient requests a hearing or produce a person in its employ to testify in a pre-hearing deposition at a date (subsequent to the recipient's request for a hearing), place, and time to be specified in the requirement or to be available to testify at the show cause hearing; provided, however, that the recipient may serve a motion within 10 days of its receipt of the notice, for the hearing examiner to limit or quash the requirement; the hearing examiner shall rule on such motion within 7 days; if an objection to the hearing examiner, filed pursuant to § 1625.6(b) has delayed such ruling, the hearing examiner shall promptly rule when the objection is resolved.

§ 1625.5 Request for hearing.

Within 30 days of receipt of the notice, the recipient shall serve upon the Corporation a request for a hearing, which must include:

(a) A short and plain statement in numbered paragraphs, that is either an admission or a denial of each of the numbered paragraphs in the notice; any averment in the notice which is

not specifically denied is deemed admitted;

(b) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of all factual grounds on which the recipient will rely to show cause why refunding should not be denied;

(c) An affidavit or affidavits covering the direct testimony of each witness upon whom recipient's counsel relies and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included; the recipient, must set forth by affidavit, sworn or certified copies of papers, and depositions, specific facts showing that there is a genuine issue of material fact for a show cause hearing;

(d) A memorandum of points and authorities showing that the Corporation has failed to provide affidavits or other evidence sufficient to deny refunding or that the affidavit(s) specified in paragraph (c) of this section constitute evidence of facts necessary to show cause why refunding should not be denied under applicable legal standards.

(e) The recipient may serve a request on the hearing examiner that the Corporation be required, upon sufficient notice, to produce a specific document or documents in the possession, custody, or control of the Corporation or of another organization identified under § 1625.4(a)(2) or produce a person in its employ (or that of such other organization) to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

§ 1625.6 Hearing examiner.

(a) The hearing examiner shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and

who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the hearing examiner, the recipient may file a written notice that it objects to the hearing examiner on the basis that this person does not fit the criteria of paragraph (a) of this section or has made statements or taken actions indicating personal bias against the recipient. The recipient will be granted a 5-day extension for presenting the basis of its objection if it files a timely notice of objection and a statement as to why it is unable with due diligence to present the basis of its objection without the extension.

(c) The President shall consider the recipient's objection(s) with any supporting documentation and, within 10 days thereafter, issue a written notice of a decision either to retain or replace the hearing examiner.

(d) No objection to the appointment of a hearing examiner may be made unless presented in the manner specified in this section.

§ 1625.7 Pre-hearing procedures.

(a)(1) On or before the date it requests a hearing, the recipient may serve a motion for an interim decision that the notice fails to state an adequate basis for the denial of its application for refunding. The hearing examiner shall rule on such motion within 7 days and shall grant the motion if he or she finds that the facts sworn to in the notice do not provide an adequate basis to deny the application for refunding.

(2) If the recipient fails to make a request for hearing in such a timely fashion that it is received by the Corporation within 30 days of receipt of the notice by the recipient, the recipient shall be deemed to have waived its right to a hearing and a final decision shall be entered by the President.

(3) If the recipient makes timely request for a hearing, the hearing examiner may, *sua sponte* or on the motion of a party, review the notice, the request for a hearing, and all documents submitted by the recipient pursuant to requirement(s) issued pursuant to § 1625.4(f) to determine before the date set for the hearing whether there is any genuine issue as to any material

fact and whether a party is entitled to summary judgment or partial summary judgment as a matter of law. If, considering the papers in the light most favorable to the opposing party, the hearing examiner finds that the parties' submissions, admissions on file, affidavits, and any other matter on the record show that there is no genuine issues as to any material fact and that either party is entitled to summary judgment as a matter of law, the hearing examiner shall issue to the President a written initial decision pursuant to § 1625.10(b). If such a decision with a partial summary judgment should become final pursuant to § 1625.11, the hearing examiner may exclude further evidence relevant only to an issue or issues resolved by such decision.

(b) If the recipient makes a timely request for a hearing, a pre-hearing conference shall be held within 7 days. At least 24 hours prior to the pre-hearing conference, each party shall cause to be delivered in person to the hearing examiner and counsel for the opposing party a list including all its affiants it intends to call for direct testimony, all the other party's affiants it will require the party to produce for cross-examination, and all other persons who are to testify on direct or cross-examination. For each person on its list, the party will indicate whether the person will be called for direct testimony or for cross-examination and whether the party will require the opposing party to produce the witness (and, if so, the basis). At the pre-hearing conference, the matters to be considered shall include:

(1) Whether summary judgment or partial summary judgment ought to be issued;

(2) Proposals to define and narrow the issues;

(3) Efforts to stipulate the facts, in whole or in part;

(4) The order of presentation of exhibits and witnesses, along with their number and identity;

(5) The possibility of presenting the case on written submission or oral argument;

(6) Any necessary variation in the date, time, and place of the hearing;

(7) The possibility of settlement; and